



State of New Mexico

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Michelle Lujan Grisham
Governor

April 4, 2019

HOUSE EXECUTIVE MESSAGE NO. 28

The Honorable Brian Egolf, Jr., Speaker of the House and
Members of the House of Representatives
State Capitol Building
Santa Fe, NM 87501

Honorable Speaker Egolf and Members of the House:

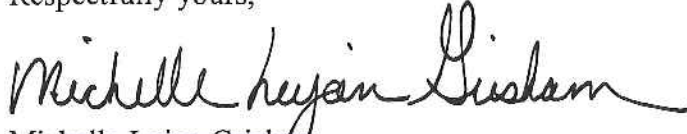
Pursuant to my authority under Article IV, Section 22 of the New Mexico Constitution, I have vetoed HOUSE BILL 564, as amended ("HB 564"), enacted by the Fifty-Fourth Legislature, First Session, 2019.

This bill is predicated on sound policy considerations. Many states have enacted probation and parole reforms that have improved public safety, reduced recidivism rates, and decreased taxpayer costs by prioritizing limited prison space for dangerous criminals. As one example, since enacting criminal justice reforms in 2011, North Carolina has closed ten prisons and reduced their prison population by 3,400 people. HB 564 represents a good step in that direction.

However, it is crucial that all stakeholders participate in the necessary discussion that New Mexicans are having about criminal justice reform, including reforms to the probation and parole system. After HB 564 was passed, the Office of the Attorney General ("OAG") and the New Mexico District Attorney's Association ("NMDAA") sent a letter to my office expressing concerns about HB 564 and its potential consequences. As HB 564's sponsors have noted, the OAG and NMDAA did not propose any amendments to HB 564 when the bill was being drafted and debated. Although I do not agree with many of their characterizations of HB 564 or when they chose to express their concerns, I have vetoed HB 564 to provide another opportunity for these stakeholders to weigh in on the important issues addressed by the bill.

Being tough on crime is not inconsistent with being smart on crime, and our government needs to be both. That is why I intend to bring all of the stakeholders together prior to the next legislative session to discuss parole and probation reforms and to seek common ground with respect to the concerns expressed by the OAG and NMDAA. I fully expect that the OAG and NMDAA will take this opportunity to develop policies to address these important issues.

Respectfully yours,



Michelle Lujan Grisham
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: 11:12 a.m. p.m.

Date: April 4 2019

By 

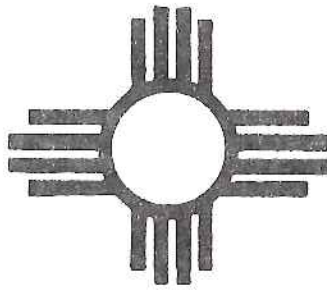
Secretary of State

Time: _____ a.m. p.m.

Date: _____ 2019

By _____

Chief Clerk of the House



The Legislature of the State of New Mexico

54th Legislature, 1st Session

LAWS 2019

CHAPTER _____

HOUSE BILL 564, as amended

Introduced by

REPRESENTATIVE ANTONIO MAESTAS

REPRESENTATIVE GAIL CHASEY

SENATOR SANDER RUE



VETOED

1 AN ACT
2 RELATING TO PROBATION AND PAROLE; PROVIDING CLARIFICATION AND
3 GUIDANCE FOR PROBATION AND PAROLE; ALLOWING FOR A PERSON ON
4 PROBATION TO HAVE THE TIME REQUIRED FOR PROBATION TO BE
5 DECREASED FOR GOOD BEHAVIOR; REPEALING SECTION 31-21-25.1
6 NMSA 1978 (BEING LAWS 1994, CHAPTER 21, SECTION 3).
7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 SECTION 1. Section 31-20-5 NMSA 1978 (being Laws 1963,
10 Chapter 303, Section 29-17, as amended) is amended to read:

11 "31-20-5. PLACING DEFENDANT ON PROBATION.--

12 A. The purpose of probation is to enforce victim
13 restitution, hold persons accountable for their criminal
14 conduct, promote a person's reintegration into law-abiding
15 society and reduce the risks that the person will commit new
16 offenses. When a person has been convicted of a crime for
17 which a sentence of imprisonment is authorized and when the
18 court has deferred or suspended sentence, it shall order the
19 defendant to be placed on probation for all or some portion
20 of the period of deferment or suspension if the defendant is
21 in need of supervision, guidance or direction that is
22 feasible for the corrections department to furnish.

23 B. Except for sex offenders as provided in Section
24 31-20-5.2 NMSA 1978, the total period of probation for
25 district court shall not exceed five years and the total

1 period of probation for the magistrate or metropolitan courts
2 shall be no longer than the maximum allowable incarceration
3 time for the offense at the time of sentencing or as
4 otherwise provided by law.

5 C. The court shall consult a validated risk and
6 needs assessment, if provided by the corrections department,
7 when deciding what conditions of probation to impose.

8 D. If a defendant is required to serve a period of
9 probation subsequent to a period of incarceration:

10 (1) the period of probation shall be served
11 subsequent to any required period of parole, with the time
12 served on parole credited as time served on the period of
13 probation and the conditions of probation imposed by the
14 court deemed as additional conditions of parole; and

15 (2) if the defendant violates any condition
16 of that parole and the violation is not sanctioned pursuant
17 to the provisions of Section 10 of this 2019 act, the parole
18 board shall cause the defendant to be brought before it
19 pursuant to the provisions of Section 31-21-14 NMSA 1978 and
20 may make any disposition authorized pursuant to that section
21 and, if parole is revoked, the period of parole served in the
22 custody of a correctional facility shall not be credited as
23 time served on probation.

24 E. A person, except a person convicted of a sex
25 offense provided in Subsection I of Section 29-11A-3 NMSA

1 1978 or a serious violent offense provided in Subparagraphs
2 (a) through (n) of Paragraph (4) of Subsection L of Section
3 33-2-34 NMSA 1978, who has been placed on supervised
4 probation by a district or magistrate court judge as provided
5 for in this section shall, after one year spent on supervised
6 probation, have thirty days of the person's supervised
7 probation changed to unsupervised probation for every thirty
8 days served without a probation violation; provided that a
9 person shall not be eligible for a reduction in supervised
10 probation time under this subsection if the person is on
11 parole and has time on parole credited toward probation time
12 pursuant to Paragraph (1) of Subsection D of this section."

13 SECTION 2. Section 31-21-4 NMSA 1978 (being Laws 1955,
14 Chapter 232, Section 2, as amended) is amended to read:

15 "31-21-4. CONSTRUCTION AND PURPOSE OF ACT.--

16 A. The Probation and Parole Act shall be liberally
17 construed to the end that the treatment of persons convicted
18 of crime shall take into consideration their individual
19 characteristics, circumstances and assessment of risk and
20 needs and that such persons shall be dealt with in the
21 community by a uniformly organized system of constructive
22 rehabilitation under probation supervision instead of in an
23 institution or under parole supervision when a period of
24 institutional treatment is deemed essential in the light of
25 the needs of public safety and their own welfare.

1 B. The corrections department shall:

2 (1) operate probation and parole supervision
3 based upon application of a validated risk and needs
4 assessment and principles of effective intervention to reduce
5 criminogenic risk and needs factors;

6 (2) focus supervision resources on the
7 initial period of release or placement on probation;

8 (3) recommend and enforce conditions that
9 include cognitive-behavioral programming to address criminal
10 thinking and address basic needs and transitional
11 requirements, such as housing, employment, medical and mental
12 health services and transportation; and

13 (4) apply a consistent system of incentives
14 and graduated sanctions to promptly respond to positive and
15 negative behavior by probationers and parolees under
16 supervision."

17 SECTION 3. Section 31-21-5 NMSA 1978 (being Laws 1978,
18 Chapter 41, Section 1, as amended) is amended to read:

19 "31-21-5. DEFINITIONS.--As used in the Probation and
20 Parole Act:

21 A. "absconding" means that a person under
22 supervision deliberately makes the person's whereabouts
23 unknown to the person's probation or parole officer or fails
24 to report for the purposes of avoiding supervision, and
25 reasonable efforts by the probation and parole officer to

1 locate the person have been unsuccessful;

2 B. "adult" means any person convicted of a crime
3 by a district court;

4 C. "board" means the parole board;

5 D. "director" means the director of the adult
6 probation and parole division of the corrections department
7 or any employee designated by the director;

8 E. "geriatric inmate" means a person who:

9 (1) is under sentence to or confined in a
10 prison or other correctional institution under the control of
11 the corrections department;

12 (2) is sixty-five years of age or older;

13 (3) suffers from a chronic infirmity,
14 illness or disease related to aging; and

15 (4) does not constitute a danger to the
16 person's own self or to society;

17 F. "institution" means the state penitentiary and
18 any other similar state institution;

19 G. "non-technical violation" means absconding or
20 arrest for a new felony or misdemeanor;

21 H. "parole" means the release to the community of
22 an inmate of an institution by decision of the board or by
23 operation of law, subject to conditions imposed by the board
24 and to its supervision;

25 I. "permanently incapacitated inmate" means a

1 person who:

2 (1) is under sentence to or confined in a
3 prison or other correctional institution under the control of
4 the corrections department;

5 (2) by reason of an existing medical
6 condition, is permanently and irreversibly physically
7 incapacitated; and

8 (3) does not constitute a danger to the
9 person's own self or to society;

10 J. "probation" means the procedure under which an
11 adult defendant, found guilty of a crime upon verdict or
12 plea, is released by the court without imprisonment under a
13 suspended or deferred sentence and subject to conditions;

14 K. "technical violation" means a violation of the
15 conditions of probation or parole supervision other than
16 arrest for a new felony or misdemeanor offense or absconding;
17 and.

18 L. "terminally ill inmate" means a person who:

19 (1) is under sentence or confined in a
20 prison or other correctional institution under the control of
21 the corrections department;

22 (2) has an incurable condition caused by
23 illness or disease that would, within reasonable medical
24 judgment, produce death within six months; and

25 (3) does not constitute a danger to the

1 person's own self or to society."

2 SECTION 4. Section 31-21-9 NMSA 1978 (being Laws 1972,
3 Chapter 71, Section 17) is amended to read:

4 "31-21-9. PRESENTENCE INVESTIGATIONS.--

5 A. Upon the order of any court, the director shall
6 prepare a presentence report that shall include the state
7 personal identification number, victim impact information,
8 record of prior convictions and the results of any validated
9 risk and needs assessments that may have been administered,
10 and such other information as the court may request.

11 B. All local and state law enforcement agencies
12 shall furnish to the director any requested criminal
13 records."

14 SECTION 5. Section 31-21-10 NMSA 1978 (being Laws 1980,
15 Chapter 28, Section 1, as amended) is amended to read:

16 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

17 A. An inmate of an institution who was sentenced
18 to life imprisonment becomes eligible for a parole hearing
19 after the inmate has served thirty years of the sentence.
20 Before ordering the parole of an inmate sentenced to life
21 imprisonment, the board shall:

22 (1) interview the inmate at the institution
23 where the inmate is committed;

24 (2) consider all pertinent information
25 concerning the inmate;

1 (3) make a finding that a parole is in the
2 best interest of society and the inmate; and

3 (4) make a finding that the inmate is able
4 and willing to fulfill the obligations of a law-abiding
5 citizen.

6 B. After a hearing, the board shall enter specific
7 findings in support of its decision and deliver the findings
8 in writing to the inmate.

9 C. If parole is denied, the inmate sentenced to
10 life imprisonment shall again become entitled to a parole
11 hearing at two-year intervals. The board may, on its own
12 motion, reopen any case in which a hearing has already been
13 granted and parole denied.

14 D. Unless the board finds that it is in the best
15 interest of society and the parolee to reduce the period of
16 parole, a person who was sentenced to life imprisonment shall
17 be required to undergo a minimum period of parole of five
18 years. During the period of parole, the person shall be
19 under the guidance and supervision of the board.

20 E. Only an inmate of an institution who was
21 sentenced to life imprisonment without possibility of release
22 or parole is ineligible for parole and shall remain
23 incarcerated for the entirety of the inmate's natural life.

24 F. Except for certain sex offenders as provided in
25 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of

1 a first, second or third degree felony and who has served the
2 sentence of imprisonment imposed by the court in an
3 institution designated by the corrections department that
4 exceeds one year or has agreed and been ordered to serve a
5 period of parole by the court shall be required to undergo a
6 two-year period of parole. An inmate who was convicted of a
7 fourth degree felony and who has served a sentence of
8 imprisonment imposed by the court in an institution
9 designated by the corrections department that exceeds one
10 year or has agreed and been ordered to serve a period of
11 parole by the court shall be required to undergo a one-year
12 period of parole. During the period of parole, the person
13 shall be under the guidance and supervision of the board.

14 G. Every person while on parole shall remain in
15 the legal custody of the institution from which the person
16 was released, but shall be subject to the orders of the
17 board. The board shall consult a validated risk and needs
18 assessment, if provided by the corrections department, when
19 deciding what conditions of parole to impose. The board
20 shall furnish to each inmate as a prerequisite to release
21 under its supervision a written statement of the conditions
22 of parole that shall be accepted and agreed to by the inmate
23 as evidenced by the inmate's signature affixed to a duplicate
24 copy to be retained in the files of the board. The board
25 shall also require as a prerequisite to release the

1 submission and approval of a parole plan. If an inmate
2 refuses to affix the inmate's signature to the written
3 statement of the conditions of parole or does not have an
4 approved parole plan, the inmate shall not be released and
5 shall remain in the custody of the institution in which the
6 inmate has served the inmate's sentence, excepting parole,
7 until such time as the period of parole the inmate was
8 required to serve, less meritorious deductions, if any,
9 expires, at which time the inmate shall be released from that
10 institution without parole, or until such time that the
11 inmate evidences acceptance and agreement to the conditions
12 of parole as required or receives approval for the inmate's
13 parole plan or both. Time served from the date that an
14 inmate refuses to accept and agree to the conditions of
15 parole or fails to receive approval for the inmate's parole
16 plan shall reduce the period, if any, to be served under
17 parole at a later date. If the district court has ordered
18 that the inmate make restitution to a victim as provided in
19 Section 31-17-1 NMSA 1978, the board shall include
20 restitution as a condition of parole. The board shall also
21 apprise the inmate in person of the conditions of parole and
22 the inmate's duties relating thereto.

23 H. When a person on parole has performed the
24 obligations of the person's release for the period of parole
25 provided in this section, the board shall make a final order

1 of discharge and issue the person a certificate of discharge.

2 I. Pursuant to the provisions of Section 31-18-15
3 NMSA 1978, the board shall require the inmate as a condition
4 of parole:

5 (1) to pay the actual costs of parole
6 services to the adult probation and parole division of the
7 corrections department for deposit to the corrections
8 department intensive supervision fund not exceeding one
9 thousand eight hundred dollars (\$1,800) annually to be paid
10 in monthly installments of not less than twenty-five dollars
11 (\$25.00) and not more than one hundred fifty dollars (\$150),
12 as set by the appropriate district supervisor of the adult
13 probation and parole division, based upon the financial
14 circumstances of the defendant. The defendant's payment of
15 the supervised parole costs shall not be waived unless the
16 board holds an evidentiary hearing and finds that the
17 defendant is unable to pay the costs. If the board waives
18 the defendant's payment of the supervised parole costs and
19 the defendant's financial circumstances subsequently change
20 so that the defendant is able to pay the costs, the
21 appropriate district supervisor of the adult probation and
22 parole division shall advise the board and the board shall
23 hold an evidentiary hearing to determine whether the waiver
24 should be rescinded; and

25 (2) to reimburse a law enforcement agency or HB 564/a
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1 local crime stopper program for the amount of any reward paid
2 by the agency or program for information leading to the
3 inmate's arrest, prosecution or conviction.

4 J. The provisions of this section shall apply to
5 all inmates except geriatric, permanently incapacitated and
6 terminally ill inmates eligible for the medical and geriatric
7 parole program."

8 SECTION 6. Section 31-21-13.1 NMSA 1978 (being Laws
9 1988, Chapter 62, Section 3, as amended) is amended to read:

10 "31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

11 A. As used in this section, "intensive supervision
12 programs" means programs that provide highly structured and
13 intense supervision, with stringent reporting requirements,
14 of certain individuals who represent an excessively high
15 assessment of risk of violation of probation or parole,
16 emphasize meaningful rehabilitative activities and reasonable
17 alternatives without seriously increasing the risk of
18 recidivist crime and facilitate the payment of restitution by
19 the offender to the victim. "Intensive supervision programs"
20 includes house arrest programs or electronic surveillance
21 programs or both.

22 B. The corrections department shall implement and
23 operate intensive supervision programs in various local
24 communities. The programs shall provide services for
25 appropriate individuals by probation and parole officers of

1 the corrections department. The corrections department shall
2 promulgate rules to provide that the officers providing these
3 services have the training, resources and case loads that
4 enable them to operate effectively and to provide for
5 offender selection and other criteria. The corrections
6 department may cooperate with all recognized law enforcement
7 authorities and share all necessary and pertinent
8 information, records or documents regarding probationers or
9 parolees in order to implement and operate these intensive
10 supervision programs.

11 C. For purposes of this section, a judge
12 contemplating imposition of an intensive supervision program
13 for an individual shall consult with the adult probation and
14 parole division of the corrections department and review the
15 results of the validated risk and needs assessment. The
16 adult probation and parole division of the corrections
17 department shall recommend only those individuals who score
18 as high risk and who would have otherwise been recommended
19 for incarceration for intensive supervision programs. A
20 judge has discretion to impose an intensive supervision
21 program for an individual, regardless of recommendations made
22 by the adult probation and parole division, only if a
23 validated risk and needs assessment has been provided to the
24 judge and considered in the decision to impose an intensive
25 supervision program. Inmates eligible for parole or within

1 twelve months of eligibility for parole, or inmates who would
2 otherwise remain in a correctional institution for lack of a
3 parole plan or those parolees whose parole the board would
4 otherwise revoke, are eligible for intensive supervision
5 programs. The provisions of this section do not limit or
6 reduce the statutory authority vested in probation and parole
7 supervision as defined by any other section of the Probation
8 and Parole Act.

9 D. There is created in the state treasury the
10 "corrections department intensive supervision fund" to be
11 administered by the corrections department upon vouchers
12 signed by the secretary of corrections. Balances in the
13 corrections department intensive supervision fund shall not
14 revert to the general fund. Beginning July 1, 1988, the
15 intensive supervision programs established pursuant to this
16 section shall be funded by those supervision costs collected
17 pursuant to the provisions of Sections 31-20-6 and 31-21-10
18 NMSA 1978. The corrections department is specifically
19 authorized to hire additional permanent or term full-time-
20 equivalent positions for the purpose of implementing the
21 provisions of this section."

22 SECTION 7. Section 31-21-14 NMSA 1978 (being Laws 1955,
23 Chapter 232, Section 17, as amended) is amended to read:

24 "31-21-14. PAROLE VIOLATIONS.--

25 A. At any time during release on parole:

1 (1) the board or the director may issue a
2 warrant for the arrest of the parolee to answer a charge of a
3 non-technical violation. The warrant shall authorize the
4 warden of the institution from which the parolee was released
5 to return the parolee to the physical custody of the
6 institution or to any other detention facility designated by
7 the board or the director. If the parolee is out of the
8 state, the warrant shall authorize the warden to return the
9 parolee to the state; or

10 (2) the director may arrest the parolee
11 without a warrant or may deputize an officer with power of
12 arrest to do so by giving the officer a written statement
13 that the parolee has, in the judgment of the director,
14 committed a non-technical violation. Where an arrest is made
15 without a warrant, the parolee shall not be returned to the
16 institution unless authorized by the director or the board.

17 B. Pending hearing as provided by law upon a
18 charge of non-technical violation, the parolee shall remain
19 incarcerated in the institution.

20 C. Upon arrest and detention for a non-technical
21 violation, the board shall cause the parolee to be promptly
22 brought before it for a parole revocation hearing on the non-
23 technical violation charged, under rules the board may adopt.

24 D. If the non-technical violation is established,
25 the board may continue or revoke the parole, impose detention

1 for a fixed term up to ninety days, which shall be counted as
2 time served under the sentence, or enter any other order as
3 it sees fit.

4 E. A parolee for whose return a warrant has been
5 issued shall, if it is found that the warrant cannot be
6 served, be a fugitive from justice.

7 F. If it appears that the parolee has committed a
8 non-technical violation, the board shall determine whether
9 the time from the date of the violation to the date of the
10 parolee's arrest, or any part of it, shall be counted as time
11 served under the sentence.

12 G. At any time during release on parole, the board
13 or the director may issue a notice to appear to answer a
14 charge of a technical violation. The notice shall be served
15 personally upon the parolee and shall initiate a technical
16 violation process in accordance with Section 11 of this 2019
17 act."

18 SECTION 8. Section 31-21-15 NMSA 1978 (being Laws 1963,
19 Chapter 301, Section 13, as amended by Laws 2016, Chapter 27,
20 Section 1 and by Laws 2016, Chapter 31, Section 1) is amended
21 to read:

22 "31-21-15. PROBATION VIOLATIONS.--

23 A. At any time during probation:

24 (1) the court may issue a warrant for the
25 arrest of a probationer for a non-technical violation. The

1 warrant shall authorize the return of the probationer to the
2 physical custody of the court or to any other detention
3 facility designated by the court; or

4 (2) the director may arrest a probationer
5 without a warrant or may deputize an officer with power of
6 arrest to do so by giving the officer a written statement
7 that the probationer has, in the judgment of the director,
8 committed a non-technical violation. The written statement,
9 delivered with the probationer by the arresting officer to
10 the official in charge of a county jail or other place of
11 detention, is sufficient warrant for the detention of the
12 probationer.

13 B. Upon the probationer's arrest and detention for
14 a non-technical violation:

15 (1) the director shall immediately notify
16 the court and submit in writing a report describing the
17 manner in which the probationer has violated the conditions
18 of release; and

19 (2) the court shall hold a probation
20 revocation hearing on the non-technical violation charged.

21 C. If the non-technical violation is established
22 at the probation revocation hearing, the court may continue
23 or revoke the probation, impose detention for a fixed term up
24 to ninety days, which shall be counted as time served under
25 the sentence, or enter any other order as it sees fit.

1 D. At any time during probation, the court may
2 issue a notice to appear to answer a charge of technical
3 violation. The notice shall be personally served upon the
4 probationer and shall initiate a technical violation hearing.

5 E. If the technical violation is established
6 before the court at a technical violation hearing, the
7 sanction for the technical violation shall be commensurate
8 with the seriousness of the violation and not a punishment
9 for the offense for which the probationer was placed on
10 probation, and the court may:

11 (1) continue the original probation;

12 (2) revoke the probation and either:

13 (a) order a new probation with any
14 condition provided for in Section 31-20-5 or 31-20-6 NMSA
15 1978; or

16 (b) require the probationer to serve
17 the balance of the sentence imposed or any lesser sentence;
18 or

19 (3) if imposition of sentence was deferred,
20 impose any sentence that might originally have been imposed,
21 but credit shall be given for time served on probation.

22 F. If it is found that a warrant for the return of
23 a probationer cannot be served, the probationer is a fugitive
24 from justice.

25 G. After the hearing, if it appears that the

1 probationer has violated the provisions of the probationer's
2 release, the court shall determine whether the time from the
3 date of violation to the date of the probationer's arrest, or
4 any part of it, shall be counted as time served on probation.

5 H. For the purposes of this section, "probationer"
6 means a person convicted of a crime by a court and released
7 without imprisonment under a suspended or deferred sentence
8 and subject to conditions.

9 I. The board shall budget funds to cover expenses
10 of returning probationers to the court.

11 J. The sheriff of the county in which the
12 probationer was convicted is the court's agent in the
13 transportation of the probationer, but the director, with the
14 consent of the court, may utilize other state agencies for
15 this purpose when it is in the best interest of the state."

16 SECTION 9. Section 31-21-17.1 NMSA 1978 (being Laws
17 1994, Chapter 21, Section 2) is amended to read:

18 "31-21-17.1. MEDICAL OR GERIATRIC PAROLE--PROCEDURES--
19 DUTIES OF THE DEPARTMENT--DUTIES OF THE BOARD.--

20 A. The corrections department shall promulgate
21 rules and shall implement a "medical and geriatric parole
22 program", including the form of an application for medical or
23 geriatric parole.

24 B. The director shall identify geriatric,
25 permanently incapacitated and terminally ill inmates and

1 authorize the release of those inmates who are eligible for
2 medical or geriatric parole and notify those inmates of the
3 opportunity to apply for medical or geriatric parole. Upon
4 receiving an application, the director shall determine within
5 sixty days whether to recommend an inmate for medical or
6 geriatric parole. The recommendation shall include the
7 inmate's age, medical history and prognosis, if applicable,
8 institutional behavior and adjustment. When the director
9 recommends an inmate for medical or geriatric parole, the
10 director shall submit a statement to the board that the
11 inmate's release is not incompatible with the welfare of
12 society.

13 C. Inmates who have not served their minimum
14 sentences may be considered eligible for parole under the
15 medical and geriatric parole program. Medical and geriatric
16 parole consideration shall be in addition to any other parole
17 for which a geriatric, permanently incapacitated or
18 terminally ill inmate may be eligible.

19 D. When considering an inmate for medical or
20 geriatric parole, the director may request that reasonable
21 medical and mental health examinations be conducted.

22 E. When determining an inmate's eligibility for
23 geriatric or medical parole, the director shall consider the
24 following criteria concerning the inmate:

25 (1) age;

1 (2) severity of illness, disease or
2 infirmities;
3 (3) comprehensive health evaluation;
4 (4) institutional behavior;
5 (5) level of risk for violence; and
6 (6) alternatives to maintaining the
7 geriatric, permanently incapacitated or terminally ill inmate
8 in traditional settings.

9 F. The parole term of the geriatric, permanently
10 incapacitated or terminally ill inmate on medical or
11 geriatric parole shall be for the remainder of the inmate's
12 sentence, without diminution of sentence for good behavior.

13 G. The board shall release an inmate on medical or
14 geriatric parole upon recommendation from the director unless
15 the parole board finds by clear and convincing evidence that
16 the inmate's release is incompatible with the welfare of
17 society and states in writing its reason for the finding.
18 The board may not deny medical or geriatric parole solely
19 because of the inmate's criminal history."

20 SECTION 10. A new section of the Probation and Parole
21 Act is enacted to read:

22 "INCENTIVES--SANCTIONS FOR TECHNICAL VIOLATIONS.--

23 A. The corrections department shall create,
24 maintain and fully implement an incentives and sanctions
25 system to guide responses to negative and positive behavior

1 by probationers and parolees under supervision by the
2 department. The system shall provide for graduated responses
3 to technical violations of supervision conditions, in a
4 swift, certain and proportional manner, and include guidance
5 and procedures to determine when and how to:

- 6 (1) request a warrant;
- 7 (2) initiate a hearing; and
- 8 (3) seek departmental approval to use
9 custodial interventions.

10 B. To implement and continuously improve the
11 incentives and sanctions system, the corrections department
12 shall:

- 13 (1) provide information and training on the
14 system for probation and parole officers, supervisors and
15 members and staff of the board;

- 16 (2) offer information and training on the
17 system to judges, prosecution and defense attorneys, law
18 enforcement personnel, detention center personnel, contracted
19 service providers and other interested personnel;

- 20 (3) review the system at least every five
21 years to ensure that it adheres to evidence-based practices
22 and that the use of sanctions and incentives by probation and
23 parole officers is consistent across the state;

- 24 (4) ensure that the guidance and procedures
25 established by the system consider community safety and the

1 needs of the victim and offender;

2 (5) collect data relating to placement
3 decisions based on the system; and

4 (6) aggregate collected data and provide a
5 report to the appropriate legislative interim committee
6 dealing with courts, corrections and justice issues every two
7 years.

8 C. A probation or parole officer who reasonably
9 believes that a probationer or parolee has committed one or
10 more technical violations that require a sanction shall
11 consult the incentives and sanctions system to determine an
12 appropriate response. Consistent with the system, the
13 officer may impose a non-detention sanction to gain the
14 person's compliance with the conditions of probation or
15 parole.

16 D. Graduated sanctions for technical violations
17 may include three-day and seven-day detention in a county
18 jail or other place of detention. Sanctions served in
19 detention shall be counted as time served under the sentence.

20 E. The incentives and sanctions system shall
21 apply to persons whose probation or parole commences
22 subsequent to the effective date of this 2019 act and to all
23 persons on probation or parole on the effective date of this
24 2019 act."

25 SECTION 11. A new section of the Probation and Parole

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1 Act is enacted to read:

2 "TECHNICAL VIOLATIONS.--

3 A. If a probation or parole officer seeks to
4 impose detention for a technical violation, the officer shall
5 review the violation and proposed detention with a
6 supervisor.

7 B. With supervisory approval, the probation or
8 parole officer shall review the violation and proposed
9 detention with the probationer or parolee and seek a signed
10 waiver from the probationer or parolee that acknowledges the
11 violation and accepts the proposed detention.

12 C. If the waiver is rejected, the probation or
13 parole officer shall promptly report the alleged violation to
14 the court, board or hearing officer, as appropriate, and
15 proceed to formal resolution.

16 D. The officer's written report of a technical
17 violation shall include the officer's recommendation and
18 justification as to final action or resolution of the
19 situation. The officer's recommendation is not binding on
20 the court."

21 SECTION 12. REPEAL.--Section 31-21-25.1 NMSA 1978
22 (being Laws 1994, Chapter 21, Section 3) is repealed.

23 SECTION 13. APPLICABILITY.--The provisions of Section
24 5 of this act apply to a person serving a term of
25 incarceration on January 1, 2020 and to a person whose term

1 of incarceration commences on or after January 1, 2020.

2 SECTION 14. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is January 1, 2020. _____

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s/Brian Egolf

Brian Egolf, Speaker
House of Representatives

s/Lisa M. Ortiz McCutcheon

Lisa M. Ortiz McCutcheon, Chief Clerk
House of Representatives

s/Howie C. Morales

Howie C. Morales, President
Senate

s/Lenore M. Naranjo

Lenore M. Naranjo, Chief Clerk
Senate

Approved by me this _____ day of _____, 2019

s/Michelle Lujan Grisham

Michelle Lujan Grisham, Governor
State of New Mexico